SUPREME COURT OF THE UNITED STATES.

No. 42.

BENJAMIN LONG, PLAINTIFF IN ERROR,

vs.

PALMER SMITH & Co.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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Langtree & O'Sullivan, Print.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judges of the Circuit Court of the United States for the Southern District of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Palmer Smith and Gurdon Smith, late partners, trading under the firm of Palmer Smith & Co., plaintiffs, and Benjamin Long, defendant, a manifest error hath happened, to the great damage of the said Benjamin Long, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the second Monday of January, in the [SEAL.] year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth year.

WM. BURNS,
Clerk Circ't Ct. U. States So. Dist. of Miss.

Issued Dec'r 2, 1839.

UNITED STATES OF AMERICA, *ss.*

To Palmer Smith and Gurdon Smith, late partners, trading under the firm of Palmer Smith & Co., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the second Monday in January next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the ninth circuit and southern district of Mississippi, wherein Benjamin Long is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned

should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sam'l J. Gholson, one of the judges of the circuit court of the United States for the southern district of Mississippi, this second day of December, in the year of our Lord one thousand eight hundred and thirty-nine, and in the 64th year of the Independence of the United States.

S. J. GHOLSON.

Served a copy of this writ on George Winchester, on 3d December, 1839, the s'd Winchester being the atto. of record for Palmer Smith & Co.

WM. M. GWIN, *Marshal*,
For F. S. HUNT, *Dep.*

Pleas before the Honorable Powhattan Ellis, Judge of the United States in and for the district of Mississippi, at a district court begun and held at the city of Natchez, for said district, on the fourth Monday of January, in the year of our Lord one thousand eight hundred and thirty-five:

Be it remembered, that heretofore, to wit, on the fourth day of April, in the year of our Lord one thousand eight hundred and thirty-four, came Palmer Smith & Co., by George Winchester, their attorney, into the clerk's office of the court aforesaid, and ordered out the following writ of summons ad respondendum, against Benjamin Long, which said writ is in the following words and figures, to wit:

Writ.

DISTRICT OF MISSISSIPPI, *ss.*

United States of America, to the Marshal of the Mississippi District, greeting:

We command you, without delay, to summon Benjamin Long, a citizen of the State of Mississippi, to be and appear before the judge of the district court of the United States, at a court to be holden at Natchez, for the district aforesaid, on the fourth Monday of June next, to answer to Palmer Smith and Gurdon Smith, citizens of the State of Louisiana, and partners in trade, under the name and style of Palmer Smith & Co., of a plea of debt, to the plaintiffs' damages, two thousand dollars; and that he do file his plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against him by default. And have then and there this writ.

Witness the Honorable Powhattan Ellis, Judge of the District aforesaid, the 4th day of April, A. D. 1834, and of the Independence of the United States the fifty-eighth.

[L. S.]

WM. BURNS, *Clk.*

Upon which said writ the marshal of the district aforesaid, to whom the same was directed, by his deputy, made the following return, to wit:

Return.

Summoned the within named defendant personally, and left copy, 19th May, 1834.

J. M. GWIN, *D. M.*

And afterwards, to wit, on the said fourth day of April, in the year of our Lord one thousand eight hundred and thirty-four, the plaintiffs, by their attorney aforesaid, filed their bill herein against the said defendant, which said bill is as follows, to wit:

Narra.

UNITED STATES OF AMERICA, *District of Mississippi, ss.*

In the District Court of the United States, to June Term, 1834.

Benjamin Long, a citizen of the State of Mississippi, was summoned to answer Palmer Smith and Gurdon Smith, citizens of the State of Louisiana, and partners in trade, under the name and style of Palmer Smith & Co., of a plea that he render unto them the sum of six thousand three hundred and fifty-six dollars and eighty-three and two-third cents, which to them he owes, and from them unjustly detains. For that whereas the said plaintiffs heretofore, to wit, at the January term of the said district court, A. D. 1833, by the consideration and judgment of said court, recovered, against one Thomas S. Scott, a certain sum of six thousand two hundred and seventy-seven dollars and ninety-two cents, with interest thereon, at the rate of eight per centum per annum, from the 11th day of February, 1833, until paid, which, in and by the said court, was adjudged to the said Palmer Smith & Co., for their damages which they had sustained by reason of the non-performance of certain promises and assumptions by the said Thomas S. Scott, before that time made to the said Palmer Smith & Co.; and also the sum of forty-four dollars and twenty-five cents, for their costs and charges by them about their suit in that behalf expended: whereof the said Thomas S. Scott was convicted, as by the record and proceedings in the said district court, to wit, at Natchez, in the district of Mississippi, more fully appears; and which said judgment still remains in full force, strength and effect, in no wise reversed, set aside, paid off or satisfied.

And the said plaintiffs further say, that they, said plaintiffs, for having execution of the said judgment, afterwards, to wit, on the thirteenth day of July, 1833, sued and prosecuted out of said district court a certain writ, called a capias ad satisfaciendum, upon the judgment aforesaid, against the said Scott, directed to the marshal of the Mississippi district, (S. W. Dickson,) by which said writ the United States of America commanded the said marshal that he should take the said Thomas S. Scott, if he should be found in his district, and him safely keep, so that the said marshal might have his body before the judges of the district court for the district of Mississippi, on the fourth Monday in January next, after, to satisfy the said Palmer Smith & Co., the damages aforesaid, and costs in form aforesaid re-

covered, and that the said marshal should have then there this writ: upon which said execution was endorsed the further sum of thirty-four dollars and sixty-six and two-third cents, for costs which have accrued subsequently to the said judgment, making the whole sum of $6,356 83⅓ then mentioned and due in the said execution. And which said writ, afterwards, to wit, on the day of July, 1833, at the district aforesaid, was delivered to Ira E. Williams, who then, and from thenceforth, until, and at, and after, the return of the said writ, was deputy marshal of the said S. W. Dickson, who was during that time the marshal of the said district of Mississippi, to be executed in due form of law: by virtue of which said writ, the said Ira E. Williams, so being deputy marshal as aforesaid, afterwards and before the said return of the said writ, to wit, on the day and year last aforesaid, at the district aforesaid, took and arrested the said Thomas S. Scott, by his body, and then and there, by virtue of said writ, had and detained him in his custody, in execution for the said damages and costs: and afterwards, to wit, on the 10th day of October, 1833, the said Ira E. Williams, deputy marshal aforesaid, having the said Scott in custody as aforesaid, under and by virtue of the said writ, to wit, at the district aforesaid, then and there committed the said Scott to the custody of Benjamin Long, who then was, and until the return of said writ continued to be, the sheriff of Madison county, in the said district of Mississippi, and the said Benjamin Long, sheriff as aforesaid, then and there received the said Scott into his, said Benjamin Long's, custody, as aforesaid, and by virtue of said commitment under said writ, then and there had and detained him, the said Scott, in execution for the said damages and costs, &c., and kept and detained him in his custody from that time until the said Benjamin Long, so being sheriff of the said county of Madison as aforesaid, afterwards, to wit, on the day and year last aforesaid, at the said county of Madison, in the district aforesaid, without leave or license, and against the will of the said Palmer Smith & Co., suffered and permitted the said Scott to escape and go at large wheresoever he would, out of the custody of him, the said Benjamin Long, he, the said Benjamin Long, so then being sheriff of the county of Madison, as aforesaid; and the said sum of six thousand three hundred and fifty-six dollars and 83⅓ cts., due for said damages and costs, being then and still wholly unpaid and unsatisfied to the said Palmer Smith & Co., to wit, at the district aforesaid, whereby an action hath accrued to the said Palmer Smith & Co., to demand and have, of and from the said Benjamin Long, the sum of six thousand three hundred and fifty-six dollars 83⅓ cts. above demanded, and interest, at 8 per cent. per annum, from the 11th February, 1833, by way of damages for the detention thereof.

Yet, though often requested, the said Long hath never paid the said plaintiffs the said sum of $6,356 83⅓ cts. above demanded, or any part thereof, but hath hitherto wholly refused so to do, and still doth refuse, to the damage of the said Palmer Smith & Co., two thousand dollars: and therefore they bring their suit, &c.

GEO. WINCHESTER, *Atty. for Plffs.*

Pleas.

And now, to wit, at the time aforesaid, comes the said defendant, by Robert H. Buckner, his attorney, and defends the wrong and injury, when, &c., and says that he does not owe the sum of money demanded by the said plaintiff in his declaration, or any part thereof, in manner and form as the said plaintiff hath complained against him; and of this the said defendant puts himself upon the country.

RO. H. BUCKNER, *P. D.*

And the plaintiffs do*th* the like.

G. WINCHESTER, *for Plffs.*

Replication.

Afterwards, to wit, at the January term of the court aforesaid, in the year of our Lord one thousand eight hundred and thirty-five, to which term this cause was legally continued, came the parties aforesaid, by their respective attorneys aforesaid; and the marshal of the district aforesaid having summoned certain good and lawful men of said district, according to the statute in such case made and provided, to be and appear before the judges of the district aforesaid, at said last mentioned term of the court aforesaid, by whom, &c., and who neither, and so forth, to recognise, and so forth, because, and so forth, the same day is given to the parties, then, &c.

At which said last mentioned term of the court aforesaid, to wit, on the ninth day of February, A. D. 1835, the jurors of the jury of which mention is above made, being called, certain of them came, to wit:

Jury.

Jacob Earhart, Earl Clapp, Simpson Merrill, John Steele, Joseph Nerbert, J. Murchison, Miles Owen, Wm. Aslett, Wm. A. Beatty, James K. Cook, Angus McNeil and T. N. Steele, who, being empanelled, tried and sworn the truth to speak concerning the matters within contained, say, upon their oaths, that the defendant doth owe the debt in the declaration mentioned in manner and form as therein alleged, and they assess the damages for the detention thereof to one thousand and sixteen dollars and ninety-six cents.

Judgment.

Therefore, it is considered by the court now here that the said Palmer Smith & Co., the plaintiffs, recover against the said Benjamin Long, the defendant, the sum of six thousand three hundred and fifty-six dollars and eighty-three and two-third cents, the debt in the declaration mentioned; also, the sum of one thousand and sixteen dollars and ninety-six cents, for their damages which they have sustained by reason of the detention of said debt; also, the further sum of seventy-eight dollars and five cents for their costs and charges by